IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NFO. 1731 OF 1981

Date of Decision : 17-10-2006

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1731 OF 1981

1A MOHAMMED ISHAQUE KHAN
AGE 87 YRS.,OCCU.BUSINESS.

1B MR. SHAHZAMAN KHAN
AGE 60 YRS., OCCU.BUSINESS.

1C MR. KHALIQUEUZ ZAMAN KHAN
AGE 58 YRS., OCCU.BUSINESS.

1D MR. SHAHJEHAN KHAN
AGE 41 YRS., OCCU.BUSINESS.

1E MR. AMIRUZZAMAN KHAN
AGE 39 YRSL, OCCU.BUSINESS.

1F MR. LAIQUE KHAN
AGE 33 YRS., OCCU.BUSINESS.

1G MR. BAIDUZZAMAN KHAN
AGE 31 YRS., OCCU.BUSINESS.

2. NASIM AKHTAR WIDOW OF KHAN
SAHEB ZAMAN KHAN OF BOMBAY,
ADULT, RESIDING AT GULSHAH
NAHAL, LADY JAMSHEDJI ROAD,
MAHIM, BOMBAY -16.

3. MOHAMED ZAMAN KHAN OF BOMBAY
INDIAN INHABITANT, AGED 4.1/2
YEARS, MINOR THROUGH NEXT
FRIEND PLAINTIFFNO.2., R/O.
GULSHAN MAHAL, LADY JAMSHEDJI
ROAD, MAHIM, BOMBAY -16. .. PLAINTIFFS.

VERSUS

LIFE INSURANCE CIORPORATION OF
INDIA, A STATUTORY CORPORATION
CONSTITUTED UNDER LIFE INSURANCE
CORPORATION ACT, 1958, HAVING
ITS CENTRAL OFFICE AT YOGAKSHEMA,
JEEVEN BIMA MARG, BOMBAY 400 001. ...DEFENDANTS.

MR. R.A.THORAT I/B. V.K.GUPTA FOR THE PLAINTIFFS.

MR. V.Y.SANGLIKAR FOR THE DEFENDANTS.

JUDGMENT RESERVED ON : 10-10-2006
JUDGMENT PRONOUNCED ON : 17-10-2006
CORAM : S.K.SHAH, J.

JUDGMENT

1 The Plaintiffs have filed this Suit against the Life Insurance Corporation for recovery of assured sum of Rs. 1 lac, alongwith interest thereon.

2. Khansaheb Zaman Mohamed Ishaq Khan was the insured under the insurance policy. He expired on 30th April, 1977. The original plaintiff Fatima Mohamed Ishaq Khan was his mother and the nominee for the insurance policy. After her death, Plaintiff Nos. 1A to 1G were brought on record as her legal heirs. Plaintiff No.2 is the widow of deceased and the Plaintiff NO.3 is the son of the deceased Khansaheb.

3. On 1st January, 1977 deceased Khansaheb Zaman had taken life insurance policy in the assured sum of Rs. 1 lac. He had paid the first yearly premium of Rs. 2440/- on the same day. After medical examination, the respondent - corporation issued the acceptance letter, dated 31.1.1977 and also issued the insurance policy bearing No. 47357671.

4. After the death of said Khansaheb Zaman on 30th April, 1977, the deceased Plaintiff No. 1, by her letter dated 15th May, 1977 informed the defendant- corporation about the death of the insured and requested the defendant -corporation to settle claim under the said policy. There was correspondence between the deceased Plaintiff No.1 and the corporation, with regard to furnishing the requisite information to LIC. By letter dated 31st July,1978, the defendant- corporation intimated the Plaintiff that their inquiries revealed that the deceased was

admitted to Tata Hospital and called upon the Plaintiffs to furnish the details of the ailment and the treatment taken by the deceased in Tata Hospital. Accordingly, the information was given. The defendant by their letter, dated 22nd November, 1978, however, repudiated Plaintiffs claim on the ground that the deceased had withheld correct information regarding his health at the time of applying for insurance and that deceased was suffering from malignant cechexia for which he had taken treatment in the hospital and he did not disclose the same although the deceased was bound to do so. In the said letter, the defendant also alleged that the Plaintiff was suffering from peptic ulcer and that fact was also not disclosed.

5. The Plaintiff therefore sent a notice dated 27th May, 1980 calling upon the defendants to pay the sum of Rs. 1 lac assured under the policy alongwith the interest @ 12 % per annum. The Plaintiffs alleged that the defendant unlawfully repudiated the claim of the Plaintiffs although the defendants received their advocate’s notice, the defendant did not pay the assured sum to the Plaintiffs, hence, they have filed this Suit.

6. The defendant-corporation resisted the suit by their Written Statement, dated 16th July, 1982. It is contended that since the death of the deceased had

occurred within a matter of about four months, they made enquiry about the same and it was found that the deceased was under treatment of doctors for several months prior to the proposal for insurance submitted by the deceased. Defendant -corporation contends that even during the period between the date of the proposal i.e. 8th January, 1977 and the date of payment of first premium on 31st January, 1977, the deceased had consulted doctors for his ailment and had been hospitalised and was treated for the diseases suffered by him. They further contend that their inquiry revealed that the deceased had history of Tuberculosis of bone with old abacess. The deceased was also suffering from peptic ulcer of the stomach for a long time before his death and he was suffering pains in the stomach, vomiting etc. The deceased was also suffering from lymphosarcoma of the stomach. They contend that the contract of insurance was expressly made on the basis of the statements made and information provided by the deceased in the proposal form. However, the deceased had suppressed material information with regard to his health and, therefore, the contract of insurance became void and thus, was legally and properly repudiated. they further contend that the cause of death of the deceased, as stated in the death certificate was shock due to haematemasis, malignant cechexia due to lymphosarcoma of stomach. As such, their contention is that the Suit be

dismissed.

7. In view of the rival pleadings of the parties, following issues are framed against each of them I record my findings for the reasons given below:-

ISSUES	FINDINGS.
1. Whether the Defendants prove that the Suit is bad for misjoinder of parties ?	(1) In negative
2. Whether the Defendants prove that the deceased was suffering from T.B. of Bone, peptic ulcer and Lymphosarcoma of stomach before the date of proposal as alleged in paragraph 6 of the written statement?	(2)In affirmative.
3. Whether the Defendants prove that the deceased made factually incorrect statements in the proposal form and declaration as alleged in paragraph 6 of the	(3)In affirmative.

written statement?

4.	Whether the defendants prove that the conditions printed on the reverse of the letter dated 31.1.1977 constitute terms of the contract ?	(4)In affirmative.
5.	Whether the Plaintiffs are entitled to the decree for the amount of Rs. 1,00,000/- assured under the Policy No.47357671 together with interest at the rate of 12 % per annum?	(5) No.
6.	What Order and What decree ?	(6)Suit dismissed with costs.

R E A S O N S.

AS TO ISSUE NO.1.

8. It is the contention of the defendants that the Suit is bad for misjoinder of the parties. The submission is that the Plaintiffs who were added as

Plaintiff Nos. 1A to 1G are not entitled to claim anything in the amount of the policy, that could be paid only to the widow of the deceased, Plaintiff No.2 and her minor son Plaintiff No.3. However, it has to be noted that original Plaintiff No.1 was the mother of the deceased and she was the nominee. The Plaintiff No.1A to 1G are brought on record as legal representatives of the original Plaintiff No.1 and to that limited extent. As such, the suit cannot be said to be bad for misjoinder of the parties. This issue, therefore, is answered in the negative.

AS TO ISSUE NOS. 2,3 AND 4.:

9. There is no dispute as to the fact that on 1st January, 1977, the deceased put up the proposal in prescribed form for the policy. He had paid the first yearly premium of Rs. 2440/-. There is also no dispute that he was subsequently examined by the medical officer of LIC and lateron, by letter dated 31.1.1977, the proposal was accepted and the policy bearing No.47357671 was issued.

10. It is the contention of the defendant that deceased made false declaration in the proposal form of insurance policy and concealed the material facts

with regard to his health. It is further their contention that since the death of the deceased had occurred within a short period after the policy was taken by the deceased, they made enquiry and their enquiry revealed that the deceased had history of Tuberculosis, he was suffering from peptic ulcer of the stomach for a long time before his death and was also suffering from pains in the stomach, vomiting etc. and the deceased also died due to Lymphosarcoma of the stomach. The contention of the defendants, therefore, is that the Plaintiffs had violated the terms of the agreement and by virtue of the provisions of Section 45 of the Insurance Act, the defendants - LIC Corporation can repudiate the claim of the Plaintiffs.

11. In support of their contentions, the defendants have examined DW 1, Felicidade D. Lewis, Admiistrative Officer (Legal) and Mahadev Rane, DW 2 - the Manager (New Business), both working with LIC. Besides, the defendants have also led evidence of DW 3, Dr. Ganesh from Tata Memorial Hospital, Dr. Janki Ramkrishnan, DW 4, the doctor from Kumar Nursing Home, where the deceased had taken the treatment. Dr. K.A.Sayed, DW 5, deceased’s family doctor and Dr. Abdul Adania, DW 6, the Assistant Medical Director from H.N.Hospital and Research Centre, where the deceased had taken treatment.

12. Mr. Lewis, DW 1 states that based on the representations of the deceased, they accepted the risk of the life of the deceased subject to the terms and conditions mentioned in the first premium receipt, dated, 31.1.1977, Exhibit D-3. The Deceased had filled up the proposal form dated 8.1.1977 (Exhibit D-1). In the proposal form, the deceased filled in all the columns with regard to his health, stating that he was not suffering from any disease and his health was very good.

13. In column No.18, the deceased was expected to giver information whether he suffered from or suffering from any of the diseases specified in clause (a) to (h) and in particular, clause (a), which refers to Tuberculosis, clause (c) refers to peptic ulcer and clause (g) refers to Cancer. The answers to these queries were in the negative. In column No. 20, the deceased was expected to answer whether he had at any time consulted medical practitioner, within five years for any ailment requiring treatment for more than a week. The answer was No. In column No. 22, the deceased was expected to answer the query whether he was operated or had ever been hospitalised for check up or treatment or any operation. The answer was No. The witness further states, based on this information, they accepted the risk of the life of the deceased,

subject to terms and conditions, which are also mentioned in the premium receipt, Exhibit D-3 and the insurance policy, Exhibit D-4. He further states that after the claim was preferred they made inquiries and their inquiries revealed that the deceased died at Kumar Nursing Home, Khar, Mumbai on 30th April, 1977. The cause of death was due to shock due to haematemasis, malignant cechexia due to Lymphosarcoma of stomach. The inquiry also further revealed that the decesed had been under treatment of doctors for several months prior to the date of the proposal and even between 8.1.1977 and 31.1.1977 and deceased had suppressed all important medical information with regard to his health. Their inquiries also revealed that the deceased had suffered from peptic ulcer in stomach for a long time and was also suffering from Lymphosarcoma of stomach, which is cancer of stomach for long time. The inquiries also revealed that the deceased had undergone tests like gastroscopy, laseractomy, biopsy, x-ray etc., even before the acceptance of his insurance policy proposal. He, therefore, states that deceased had deliberately given false answers to induce the insurance company to accept the risk of his life.

14. In support, the defendants have examined Dr Ganesh from Tata Memorial Hospital. The defendants relied on certificate issued by Dr. P.B.Desai, the

Cancer Specialist fromTata Memorial Hospital, produced at Exhibit D-38 (Marked Exhibit subject to objection). It seems that Dr. Ganesh admitted in his evidence that he knew Dr. Desai right from 1984 and was also knowing his signature. When he was pointed out the signature appearing on Exhibit D-38, the certificate, he gave evasive answers like I do not know or I do not remember. Strictly speaking, therefore, he has not proved the certificate.

15. Apart from this, the defendants have examined Dr. Janki Ramkrishnan, DW 4, who was from Kumar Nursing Home, who has proved the certificate at Exhibit D-32. This certificate was given by the hospital on the prescribed form of the LIC, on defendant - corporation requiring details of the treatment. This certificate clearly shows that the deceased was admitted to this hospital and expired on 30th April, 1977, giving same cause of death as which has been stated above. The further information which is furnished in Column No. 5 is that he was transferred from Tata being the case of Limphosarcoma on 23.4.1977 for supportive line of treatment. It is in this hospital that the deceased died on 30th April, 1977. This certificate therefore shows that the deceased was admitted in this hospital as he was referred by Tata Memorial Hospital on 23.4.1977.

16. There is evidence of Dr. K.A.Sayed, who was the family Doctor of the deceased. He has proved the certificate of treatment/ consultation, which is produced at Exhibit 37. According to this witness, the deceased was his patient and he was treating him off and on from 1976 onwards for abdominal pains and vomiting. Theretofore, he had referred him to Dr. B.J.Vakil, the Gastrologist. This therefore clearly indicates that the deceased was suffering from abdominal pains and vomiting right from 1976 and that he had taken treatment for the same from his family Doctor, Dr. Sayed. This also establishes the fact that Dr. Sayed referred him to dr. B.J.Vakil. All these facts were not disclosed by the deceased in proposal form. Then there is evidence of Dr. Atul Adnania, PW 6 from H.N.Hospital. He has proved the Certificate issued by the Hospital, produced at Exhibit 22, which shows that the deceased was admitted to that hospital on 15.1.1977, as an indoor patient for treatment under Dr. B.J.Vakil. The Certificate further shows that the nature of complaint for which deceased was admitted was burning pain, vomiting, pains in abdomen and dyspepsia and the patient was suffering for the last 8.1/2 months and the attack was then the 8th attack in the last eight weeks and the situation was acute for 3/4 months. This evidence clearly shows that the deceased was suffering from all these ailments for a period of 8 moths prior to the

admission in H.N. Hospital on 15.1.1977 i.e. much prior to the date of the proposal moved by the deceased for getting LIC Policy. All these facts were not disclosed by the deceased in the proposal form. There is no much cross-examination of these witnesses regarding this evidence.

. The cause of death also clearly indicates that the deceased was suffering from all these ailments of peptic ulcer, T.B. of bone and Lymphosarcoma of the stomach i.e. cancer. There should not be two opinions that the cancer does not develop all of a sudden. It is a long process, which obviously must have started much prior to the date of the proposal for insurance. As such, issue No. 2 & 3 will have to be answered in the affirmative.

17. So far as the issue No.4 is concerned, there should be no doubt that the conditions printed on the reverse of the premium receipt, dated 31.1.1977 constituted terms of the contract.

. In view of the provisions of Section 45 of the Insurance Act, it is clear case of death of the deceased within a period of two years from the date of policy and, therefore, the defendant had right to repudiate the claim made by the Plaintiffs. When the defendant was bound to make bona fide true statements

in the proposal form, as per the terms of the contract and when he withheld material information with regard to the state of his health, the defendants had right to repudiate the contract. It also clearly appears that the deceased made a representations to the LIC only with an intention of getting the life policy issued in his favour, when he filled up the proposal form suppressing the material facts with regard to his health.

18. In this regard the observations of the Apex Court, made in case of LIFE INSURANCE CORPORATION OF INDIA VS. G.M.CHANNABASEMMA, REPORTED IN AIR 1991, SC, 392, are worth noting. The relevant observations are as follows :-

> "7. .... It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding, whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to sate them correctly cannot be diluted.....".

This issue, therefore, is answered accordingly.

AS TO ISSUE NO. 5.:

19. As discussed above, the Plaintiffs are not entitled to claim anything from the defendants and, therefore, the Suit shall have to be dismissed with costs. This issue is therefore answered accordingly. Hence, the Order :-

O R D E R

(1) The Suit is dismissed with costs.

.....

[S.K.Shah, J.]

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JUDGMENT RESERVED ON : 10-10-2006
JUDGMENT PRONOUNCED ON : 17-10-2006
CORAM : S.K.SHAH, J.
For the reasons separately recorded in the Judgment,

the Honourable Court had passed the following Order :-

" O R D E R

(1) The Suit is dismissed with costs.

.....

[S.K.Shah, J.]"

D.V.Godbole

PA to S.K.Shah,J.

High Court, Mumbai.

Date : 20.10.2006.

To,

The Officer on Special Duty,
Office of the Special Court.,
High Court, Bombay.

Sub. : Request to sanction medical leave.

Honourable Sir,

Since last Saturday, the 14th October, I am suffering from back pain. The treatment is being taken from Saint Jorges Hospial, Mumbai and during the treatment it was also revealed that Piles have developed and required to be operated. The operation is scheduled on 4th November, 2006.

Under the circumstances I was unable to attend office from 16.10.2006 to 19.10.2006. I request that the said period of my absence may kindly be treated as on medical leave by sanctioning the same. I had already informed the illness to my colleagues in the chamber.

Yours faithfully,

D.V.Godbole.